

# **EXHIBIT “A”**

# **EXHIBIT “A”**

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BRADLEY J. BELLISARIO, ESQ.  
Nevada Bar No. 13452  
**BELLISARIO LAW P.C.**  
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Las Vegas, NV 89130  
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*Attorney for Plaintiff*  
*David Walton*

CASE NO: A-20-818068-C  
Department 2

DISTRICT COURT  
CLARK COUNTY, NEVADA

DAVID WALTON,  
Plaintiff,

Case No.:  
Dept No.:

vs.

COMPLAINT

SMITH'S FOOD & DRUG CENTERS, INC.  
A/K/A KROGER AND DOES I-V, AND ROE  
CORPORATIONS, I-V, INCLUSIVE,  
Defendants

David Walton ("Plaintiff"), by and through his attorney, Bradley Bellisario, Esq., of Bellisario Law P.C., hereby alleges against Smith's Food & Drug Centers, Inc.; ROE Corporations I-V, and DOES I-V (each of the foregoing identified defendants are hereinafter referred to as "Defendants") as follows:

**I. PARTIES AND JURISDICTION**

1. That Plaintiff DAVID WALTON (hereinafter referred to as "Plaintiff") is and, at all times mentioned herein, was a resident of the State of Nevada, County of Clark.

2. That Defendant SMITH'S FOOD & DRUG CENTERS, INC. a/ka/ Kroger is and, at all times mentioned herein, was a Foreign (Ohio) Corporation with it's principle place of business in the State of Utah.

COMPLAINT - 1

1 3. That the true names and capacities, whether individual, corporate, associates, co-  
2 partnership, or otherwise of Defendants DOES I-V and ROE CORPORATIONS I-V, are unknown  
3 to Plaintiff who therefore sues said defendants by such fictitious names. Plaintiff is informed and  
4 believes and thereon alleges that each of the defendants designated as DOES I-V and ROE  
5 CORPORATIONS I-V is responsible in some manner for the events and happenings referred to in  
6 this action and proximately caused damages to Plaintiff as herein alleged. The legal responsibility  
7 of said Defendant DOES I-V and ROE CORPORATIONS I-V arises out of, but is not limited to,  
8 their status as owners, maintainers, managers, operators, inspectors, controllers, entrustors,  
9 constructors and/or installers of the subject premises and/or the area where the alleged incident  
10 occurred as described more fully below, and/or their status as owners, maintainers, managers,  
11 operators, inspector, controllers, entrustors, constructors, designers, installers, manufacturers,  
12 sellers and/or distributors of the subject dangerous condition, and/or their agency, master/servant  
13 or joint venture relationship with said defendant and/or the otherwise responsible parties, including  
14 any other entities who are also responsible for the events and claims asserted herein, such as parent  
15 and subsidiary companies affiliated with the named or otherwise responsible entities. Moreover,  
16 on information and belief, Defendant DOES I-V and ROE CORPORATIONS I-V were involved  
17 in the initiation, approval, support or execution of the wrongful/negligent acts upon which this  
18 litigation is premised, or of similar actions against Plaintiff of which Plaintiff is presently unaware.  
19 Plaintiff will ask leave of this Honorable Court to amend this Complain to insert the true names  
20 and capacities of said defendants and, when the same have been ascertained, to join such  
21 defendants in this action together with the proper charging allegations.  
22

23  
24 4. At all times relevant herein, Defendants' employees and/or authorized agents contributed  
25 to and/or caused the circumstances resulting in the subject incident described below and said  
26  
27  
28

1 employees and/or agents were acting within the course and scope of such employment and/or  
2 agency at the time, thereby rendering Defendants liable for the negligent acts of said employees  
3 and/or agents under the doctrine of vicarious liability/respondeat superior. The true names and  
4 capacities of these employees and agents are presently unknown to Plaintiff at this time, who  
5 therefore identifies said individuals by the collective fictitious name of "DOE EMPLOYEES."  
6 When true names and capacities of these individuals are ascertained, Plaintiff will seek to amend  
7 this Complaint as necessary.  
8

9 5. That at all times pertinent, Defendants were agents, servants, employees, or joint ventures  
10 of every other defendant herein and, at all times mentioned herein, were acting within the scope  
11 and course of said agency, employment, or joint venture with knowledge, permission and consent  
12 of all other named defendants.  
13

14 6. That the facts and circumstances that give rise to the subject lawsuit occurred in Clark  
15 County, Nevada on the premises of Smith's Food & Drug Centers Inc., d/b/a M707 Kroger  
16 West/Smith's at 3013 W. Craig Road, North Las Vegas, NV 89032 (hereinafter the "Premises"),  
17 which, upon information and belief, at all times mention herein, was owned, maintained, managed,  
18 operated, constructed, installed, inspected, and/or controlled by Defendants, and/or that  
19 Defendants were otherwise responsible for the area within the Premises where the subject incident  
20 occurred, and/or that Defendants were otherwise responsible for the subject dangerous condition  
21 that is described more fully below, and/or that Defendants are otherwise responsible for the subject  
22 incident and/or Plaintiff's resulting damages.  
23  
24

## 25 **II. GENERAL ALLEGATIONS**

26 7. That Smith's Food & Drug Center's Inc. operates a grocery store at 3013 W. Craig Rd.,  
27 Las Vegas, NV 89032 (Store # M706), commonly referred to as "Smith's."  
28

1 8. That on or around July 15, 2018, Plaintiff, DAVID WALTON, was an invitee of Smith's  
2 Food & Drug Centers Inc. Mr. Walton drove his vehicle to the property located at 3013 W. Craig  
3 Rd. and upon arrival at the property Mr. Walton parked his vehicle in the store parking lot and  
4 proceeded to enter the Premises through the front door.  
5

6 9. Plaintiff DAVID WALTON shopped for grocery items at Smith's Food & Drug Centers  
7 Inc., and once Plaintiff had all desired products he proceeded to the self-checkout.

8 10. That an unknown liquid was on the floor in the self-checkout area.

9 11. That the unknown liquid created a Dangerous Condition.

10 12. That the Dangerous Condition was the result of the act of a Smith's employee and/or the  
11 Dangerous Condition was on the floor for such a duration of time that a Smith's employee  
12 performing their work duties in a reasonable manner should have known, or had actual knowledge  
13 of the Dangerous Condition.  
14

15 13. As Plaintiff approached a self-checkout scanner Plaintiff slipped and fell on the unknown  
16 liquid on the floor near the self-checkout scanner. The fall caused Plaintiff to forcefully impact  
17 the hard laminate tile / concrete floor with this hand, wrist, elbow, shoulder and knee before  
18 coming to complete rest on the ground.  
19

20 14. After the fall an employee of Smith's Food & Drug Centers, Inc. who was working the  
21 self-checkout area approached Plaintiff and observed the liquid on Plaintiff's shorts and on the  
22 floor by the self-checkout scanner.  
23

24 15. Subsequent to the fall, Plaintiff sought medical attention for multiple traumatic injuries,  
25 ultimately leading to surgical intervention and extensive post-traumatic accident therapeutic  
26 treatments.  
27

28 ///

FIRST CAUSE OF ACTION  
(Premises Liability - Negligence)

16. Plaintiff incorporates paragraphs 1 through 15 as if those paragraphs were fully incorporated herein.

17. That Defendants, as the owners, managers and/or maintainers of the Premises, owed Plaintiff a duty of care to provide a safe environment for Plaintiff, free from dangerous conditions.

18. That Defendants owed Plaintiff a duty of care to adequately maintain and inspect the Premises to ensure that the Premises was free from dangerous conditions.

19. That Defendants owed Plaintiff a duty of care to warn Plaintiff of any non-obvious and dangerous conditions on the Premises.

20. That Defendants knew or reasonably should have known that the subject Dangerous Condition existed on the Premises.

21. That Defendants at all times relevant herein, breached the aforementioned duties of care by, among other things:

- a. Failing to provide Plaintiff with a safe environment, free from hazards that were or should have been recognized by Defendants;
- b. Failing to properly construct and/or inspect the Dangerous Condition, which ultimately caused Plaintiff's injuries and damages;
- c. Permitting and allowing the Dangerous Condition to remain for an unreasonable period of time despite having actual and/or constructive notice of said condition;
- d. Failing to properly warn of the non-obvious and Dangerous Condition; and/or
- e. Otherwise acting in negligent and careless manner by failing to exercise the degree of care required under the circumstances.



22. As a direct and proximate result of Defendants' actions, Plaintiff has suffered general and special damages in an amount in excess of \$15,000.00.

23. That as a direct and proximate result of Defendants' actions, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

**SECOND CAUSE OF ACTION**  
**(Premises Liability – Gross Negligence)**

24. Plaintiff incorporates paragraphs 1 through 23 as if those paragraphs were fully incorporated herein.

25. That Defendants, as the owners, managers and/or maintainers of the Premises, owed Plaintiff a duty of care to provide a safe environment for Plaintiff, free from dangerous conditions.

26. That Defendants owed Plaintiff a duty of care to adequately maintain and inspect the Premises to ensure that the Premises was free from dangerous conditions.

27. That Defendants owed Plaintiff a duty of care to warn Plaintiff of any non-obvious and dangerous conditions on the Premises.

28. That Defendants knew or reasonably should have known that the subject Dangerous Condition existed on the Premises.

29. That Defendants at all times relevant herein, breached the aforementioned duties of care by, among other things:

- a. Failing to provide Plaintiff with a safe environment, free from hazards that were or should have been recognized by Defendants;
- b. Failing to properly clean and/or inspect the Dangerous Condition, which ultimately caused Plaintiff's injuries and damages;
- c. Permitting and allowing the Dangerous Condition to remain for an unreasonable period of time despite having actual and/or constructive notice of said condition;

1 d. Failing to properly warn of the non-obvious and Dangerous Condition; and/or

2 e. Otherwise acting in a negligent and careless manner by failing to exercise the  
3 degree of care required under the circumstances.

4 30. Defendants engaged in actions or omissions in respect to their legal duty of an aggravated  
5 character, and/or with willful, wanton disregard for Plaintiff's safety.

6 31. As a direct and proximate result of Defendant's breach, Plaintiff suffered devastating  
7 injuries.

8 32. As a direct and proximate result of Defendants' actions, Plaintiff has suffered general and  
9 special damages in an amount in excess of \$15,000.00.

10 33. That as a direct and proximate result of Defendants' actions, Plaintiff has been required to  
11 engage the services of an attorney, incurring attorneys' fees and costs to bring this action.

12 **THIRD CAUSE OF ACTION**  
13 **(Negligent Hiring)**

14 34. Plaintiff incorporates paragraphs 1 through 33 of the Complaint as though said paragraphs  
15 were fully set forth herein.

16 35. Defendants owed Plaintiff several duties including, but not limited to, the following:

- 17 a. The duty to keep Plaintiff safe from the negligent acts of their employees;  
18 b. The duty to provide and hire responsible employees; and  
19 c. The duty to conduct reasonable investigation into the backgrounds of employees.

20 36. Upon information and belief, Defendants breached these duties by, among other things;

- 21 a. Hiring individuals, including DOES EMPLOYEES, who were not qualified and/or  
22 competent for their positions;



b. Failing to conduct a reasonable and thorough investigation into the personal background and employment history of their employees, including DOE EMPLOYEES;

c. Failing to implement adequate policies and/or procedures for hiring employees, including DOE EMPLOYEES; and/or

d. Failing to adequately train their employees, including DOES EMPLOYEES.

37. As a direct and proximate result of Defendants' actions, Plaintiff has suffered general and special damages in an amount in excess of \$15,000.00.

38. That as a direct and proximate result of Defendants' actions, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

**FOURTH CAUSE OF ACTION**  
**(Negligent Training)**

39. Plaintiff incorporates paragraphs 1 through 38 of the Complaint as though said paragraphs were fully set forth herein.

40. Defendants owed Plaintiff the duty to exercise reasonable care in training and supervision of any and all employees. This duty required by Defendants to train and supervise employees, including DOE EMPLOYEES, to ensure that these employees acted without negligence.

41. Defendants breached this duty when they failed to properly train and supervise DOE EMPLOYEES, whose negligence caused injury to Plaintiff as alleged herein. If Defendants had properly trained and supervised DOE EMPLOYEES, this negligence would not have occurred.

42. As a direct and proximate result of Defendant's actions, Plaintiff has suffered general and special damages in an amount in excess of \$15,000.00.

43. That as a direct and proximate result of Defendants actions, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

**FIFTH CAUSE OF ACTION**  
**(Negligent Retention)**

44. Plaintiff incorporates paragraphs 1 through 43 of the Complaint as though said paragraphs were fully set forth herein.

45. Defendants owed Plaintiff the duty to exercise reasonable care in the retention of employees.

46. Upon information and belief, Defendants breached this duty by negligently retaining employees, including DOE EMPLOYEES, even though they knew, or should have known, that these employees lacked the qualifications and/or competence for their position.

47. As a direct and proximate result of Defendants' actions, Plaintiff has suffered general and special damages in an amount in excess of \$15,000.00.

48. That as a direct and proximate result of Defendants' actions, Plaintiff has been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAVID WALTON, expressly reserving the right to amend this Complaint prior to or at the time of trial of this action to insert those items of damage not yet fully ascertainable, prays for judgment against all Defendants, and each of them as follows:

1. For general damages sustained by Plaintiff in an amount in excess of \$15,000.00;
2. For special damages sustained by Plaintiff in an amount in excess of \$15,000.00;
3. For reasonable attorney's fees and costs;
4. For pre and post judgment interest at the statutory rate; and
5. For such other relief as the Court deems just and proper.

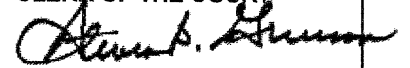
Dated this 15<sup>th</sup> day of July, 2020.



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*David Walton*

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1 **MDSM**  
2 JERRY S. BUSBY  
3 Nevada Bar #001107  
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5 3016 West Charleston Boulevard - #195  
6 Las Vegas, Nevada 89102  
7 (702) 366-1125  
8 FAX: (702) 366-1857  
9 [jbusby@cooperlevenson.com](mailto:jbusby@cooperlevenson.com)  
10 Attorneys for Defendant  
11 SMITH'S FOOD & DRUG CENTERS, INC.

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 DAVID WALTON,  
10 Plaintiff,

CASE NO.: A-20-818068-C  
DEPT. NO.: II

11 vs.

12 SMITH'S FOOD & DRUG CENTERS, INC.  
13 A/K/A KROGER AND DOES I-V, AND  
14 ROE CORPORATIONS, I-V, INCLUSIVE,

**DEFENDANT SMITH'S FOOD & DRUG  
CENTERS, INC.'S MOTION TO DISMISS**

**HEARING DATE REQUESTED**

Defendants.

15 COMES NOW Defendant, SMITH'S FOOD & DRUG CENTERS, INC. ("SMITH'S"), by  
16 and through its attorney of record, JERRY S. BUSBY ESQ., of the law firm COOPER LEVENSON,  
17 P.A., and submits this Motion to Dismiss for Plaintiff's failure to timely serve the Summons and  
18 Complaint.

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28 ///

1 This Motion is further made and based on NRCP 4(e), the pleadings and papers on file herein,  
2 the Memorandum of Points and Authorities submitted herewith, and any oral argument that may be had  
3 at the time of hearing of this matter.

4 Dated this 17th day of November, 2020.

5 COOPER LEVENSON, P.A.

6  
7 By /s/ Jerry S. Busby  
8 Jerry S. Busby  
9 Nevada Bar No. 001107  
10 3016 West Charleston Boulevard - #195  
11 Las Vegas, Nevada 89102  
12 Attorneys for Defendant  
13 SMITH'S FOOD & DRUG CENTERS, INC.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I.**

16 **OVERVIEW**

17 NRCP 4(e) mandates dismissal of a complaint for failure to timely serve process unless the  
18 party who was responsible for service files a motion for enlargement of time to serve process and  
19 shows good cause for their delay.

20 Here, Plaintiff filed his Complaint on July 15, 2020, and more than 124 days later has still  
21 not served the Complaint. Plaintiff's failure to effect service of process is a clear and obvious  
22 violation of NRCP Rule 4(e). Furthermore, Plaintiff has never filed a Motion to Enlarge Time and  
23 cannot show good cause for his failure to timely serve the Complaint. Plaintiff's failure to conduct  
24 due diligence of determining the proper parties or even a cursory review of available public records  
25 does not excuse his responsibility of complying with applicable procedural standards. Therefore,  
26 while Plaintiff's accident and his alleged resulting injuries are unfortunate, his failure to act with  
27 reasonable diligence requires dismissal of this case.

28 Based on the foregoing and the law and argument below, SMITH'S respectfully requests this  
Court grant its Motion to Dismiss.

///

1 II.

2 **PROCEDURAL HISTORY**

3 Plaintiff filed his Complaint on October 23, 2019. Plaintiff failed to timely serve SMITH'S  
4 with a copy of the Complaint. It has been more than 124 days since Plaintiff filed his Complaint.  
5 According to the information available on the Eighth Judicial District Court Portal, Plaintiff  
6 requested and this Court issued a Summons July 16, 2020. Four months have passed since the  
7 Summons was issued without any attempted service of process.

8 III.

9 **LEGAL ARGUMENT**

10 **1. Plaintiff failed to timely serve process.**

11 NRCP 4(e) reads:

12 The summons and complaint must be served upon a defendant no later  
13 than 120 days after the complaint is filed, unless the court grants an  
14 extension of time under this rule. If service of the summons and  
15 complaint is not made upon a defendant before the 120-day service  
16 period--or any extension thereof--expires, *the court must dismiss the*  
17 *action*, without prejudice, as to that defendant upon motion or upon  
18 the court's own order to show cause. If a plaintiff files a motion for an  
19 extension of time before the 120-day service period--or any extension  
20 thereof--expires and shows that good cause exists for granting an  
21 extension of the service period, the court must extend the service  
22 period and set a reasonable date by which service should be made.  
(Emphasis added.)

23 More than 124 days have elapsed since the filing of Plaintiff's Complaint. Given the plain  
24 meaning of NRCP Rule 4(e), the case "must" be dismissed unless Plaintiff filed a motion to enlarge  
25 time to serve the pleading and can show good cause for his delay. Having done neither in this case,  
26 dismissal is mandatory.

27 **2. Plaintiff did not seek enlargement of time and cannot show good cause for the**  
28 **untimely service of process.**

29 In 2004, NRCP 4(i) was amended to add a requirement that a party must file a motion  
30 seeking enlargement of time to effect service before the expiration of the 120-day time period.  
31 *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 245 P.3d 1198, 1200 (2010).

32 ///



1 Here, Plaintiff did not file a motion to enlarge time to serve the Complaint. Further, he  
2 cannot establish good cause for his failure because he has not taken any affirmative steps to serve  
3 SMITH'S and advance his case. Moreover, there is no evidence that SMITH'S evaded service or did  
4 anything to thwart Plaintiff's efforts to effectuate proper service. SMITH'S is a well-known and  
5 established corporation in southern Nevada. Information regarding SMITH'S registered agent is  
6 easily accessible even for laypersons, let alone Plaintiff's attorney. Thus, Plaintiff has not been  
7 diligent in attempting to serve SMITH'S. Since the filing of his Complaint, Plaintiff has had ample  
8 time to serve the same, yet he has done nothing to prosecute his case.

9 IV.

10 CONCLUSION

11 Plaintiff failed to serve process on SMITH'S. Since the filing of his Complaint, 124 days  
12 have passed. Beyond this, Plaintiff did not seek to enlarge time to serve his Complaint and is  
13 foreclosed from establishing good cause for his dilatory actions. More importantly, the two-year  
14 statute of limitations for personal injury actions in Nevada has run.

15 Accordingly, for the reasons state above, SMITH'S Motion to Dismiss Plaintiff's Complaint  
16 should be granted, and this matter should be dismissed in its entirety.

17 Dated this 17th day of November, 2020.

18 COOPER LEVENSON, P.A.

19  
20 By /s/ Jerry S. Busby  
21 Jerry S. Busby  
22 Nevada Bar No. 001107  
23 3016 West Charleston Boulevard - #195  
24 Las Vegas, Nevada 89102  
25 Attorneys for Defendant  
26 SMITH'S FOOD & DRUG CENTERS, INC.  
27  
28

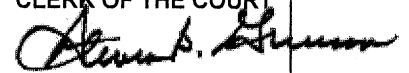
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and that on this 17th day of November, 2020, I did cause a true copy of the foregoing **DEFENDANT SMITH'S FOOD & DRUG CENTERS, INC.'S MOTION TO DISMISS** to be served upon each of the parties listed below via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System:

Bradley J. Bellisario, Esq.  
7495 West Azure Drive – Suite 258  
Las Vegas, NV 89130  
Attorney for Plaintiff

By /s/ Theresa H. Rutkowski  
An Employee of  
COOPER LEVENSON, P.A.

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11/17/2020 4:15 PM  
Steven D. Grierson  
CLERK OF THE COURT



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*

David Walton, Plaintiff(s)

Case No.: A-20-818068-C

vs.

Smith's Food & Drug Centers, Inc.,

Department 2

Defendant(s)

**NOTICE OF HEARING**

Please be advised that the Defendant Smith's Food and Drug Centers Inc's Motion to Dismiss in the above-entitled matter is set for hearing as follows:

**Date:** December 21, 2020

**Time:** 9:30 AM

**Location:** RJC Courtroom 03B  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

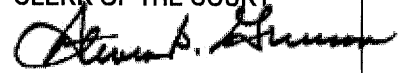
By: /s/ Allison Behrhorst  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Allison Behrhorst  
Deputy Clerk of the Court

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11/18/2020 8:48 AM  
Steven D. Grierson  
CLERK OF THE COURT



1 **CSERV**  
2 JERRY S. BUSBY  
3 Nevada Bar #001107  
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5 3016 West Charleston Boulevard - #195  
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8 FAX: (702) 366-1857  
9 jbusby@cooperlevenson.com  
10 Attorneys for Defendant  
11 SMITH'S FOOD & DRUG CENTERS, INC.

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 DAVID WALTON,  
13  
14 Plaintiff,

CASE NO.: A-20-818068-C  
DEPT. NO.: II

15 vs.

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18 ROE CORPORATIONS, I-V, INCLUSIVE,  
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20 Defendants.

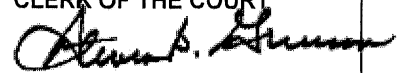
**CERTIFICATE OF SERVICE**

21 Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and  
22 that on this 18th day of November, 2020, I did cause a true copy of the foregoing **DEFENDANT**  
23 **SMITH'S FOOD & DRUG CENTERS, INC.'S MOTION TO DISMISS** to be placed in the  
24 United States Mail, with first class postage prepaid thereon, and addressed as follows:

25 Bradley J. Bellisario, Esq.  
26 7495 West Azure Drive – Suite 258  
27 Las Vegas, NV 89130  
28 Attorney for Plaintiff

By /s/ Theresa H. Rutkowski  
An Employee of  
COOPER LEVENSON, P.A.

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1 **CSERV**  
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7 (702) 366-1125  
8 FAX: (702) 366-1857  
9 jbusby@cooperlevenson.com  
10 Attorneys for Defendant  
11 SMITH'S FOOD & DRUG CENTERS, INC.

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 DAVID WALTON,  
13  
14 Plaintiff,

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15 vs.

16 SMITH'S FOOD & DRUG CENTERS, INC.  
17 A/K/A KROGER AND DOES I-V, AND  
18 ROE CORPORATIONS, I-V, INCLUSIVE,

**CERTIFICATE OF SERVICE**

19 Defendants.

20 Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and  
21 that on this 18th day of November, 2020, I did cause a true copy of the foregoing **NOTICE OF**  
22 **HEARING** to be placed in the United States Mail, with first class postage prepaid thereon, and  
23 addressed as follows:

24 Bradley J. Bellisario, Esq.  
25 7495 West Azure Drive – Suite 258  
26 Las Vegas, NV 89130  
27 Attorney for Plaintiff

28 By /s/ Theresa H. Rutkowski  
An Employee of  
COOPER LEVENSON, P.A.

1 AFFT

2 Bellisario Law

3 Bradley Bellisario, Esq.

4 2945 N Martin L King Blvd

5 North Las Vegas, NV 89032

6 State Bar No.: 13452

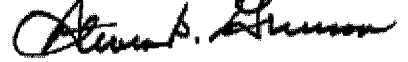
7 Attorney(s) for: Plaintiff(s)

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Steven D. Grierson

CLERK OF THE COURT



DISTRICT COURT  
CLARK COUNTY, NEVADA

David Walton

vs

Plaintiff(s)

Smith's Food &amp; Drug Centers, Inc., A/K/A Kroger; et al

Defendant(s)

Case No.: A-20-818068-C

Dept. No.: 2

Date:

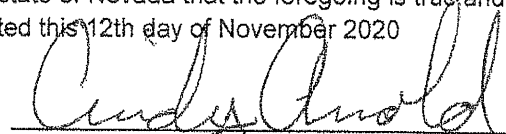
Time:

## AFFIDAVIT OF SERVICE

I, Cindy Lee Arnold, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Summons; Complaint on the 12th day of November, 2020 and served the same on the 12th day of November, 2020 at 12:25PM by serving the Defendant(s), Smith's Food & Drug Centers, Inc., A/K/A Kroger by personally delivering and leaving a copy at Corporation Service Company, 112 N. Curry St., Carson City, NV 89703 with Kris Osborne, Administrative Assistant pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law  
of the state of Nevada that the foregoing is true and correct.  
Executed this 12th day of November 2020



Affiant - Cindy Lee Arnold #: R-2020-12596  
Legal Process Service - License # 604

WorkOrderNo2009512



Case Number: A-20-818068-C

Legal Process Service, 724 S. 8th Street, Las Vegas, NV 89101 (702) 471-7255



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Steven D. Grierson  
CLERK OF THE COURT



BRADLEY J. BELLISARIO, ESQ.  
Nevada Bar No. 13452  
**BELLISARIO LAW**  
7495 W. Azure Dr., Ste. 258  
Las Vegas, NV 89130  
T: (702) 936-4784  
F: (702) 936-4801  
E: BradB@BellisarioLaw.com  
*Attorney for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

DAVID WALTON,  
Plaintiff,

vs.

SMITH'S FOOD & DRUG CENTERS, INC.  
A/K/A KROGER AND DOES I-V, AND ROE  
CORPORATIONS, I-V, INCLUSIVE,  
Defendants.

Case No.: A-20-818068-C  
Dept No.: 11

OPPOSITION TO DEFENDANT SMITH'S  
FOOD & DRUG CENTERS, INC.'S  
MOTION TO DISMISS

COMES NOW Plaintiff, DAVID WALTON, by and through his attorney of record,  
BRADLEY J. BELLISARIO, Esq. of Bellisario Law, and submits the following OPPOSITION  
TO DEFENDANT SMITH'S FOOD & DRUG CENTERES, INC.'S MOTION TO DISMISS.

STATEMENT OF FACTS

This action arises from an incident which occurred on July 15, 2018 in which Plaintiff,  
David Walton, sustained significant injuries while on Defendant's premises. On July 15, 2020  
Plaintiff filed a Complaint in Clark County District Court alleging negligence, gross negligence,  
negligent hiring, negligent training, and negligent retention. On November 12, 2020 Defendant  
was served a copy of the Complaint and Summons by Cindy Lee Arnold of Legal Process Service

OPPOSITION TO DEFENDANT SMITH'S FOOD & DRUG CENTERS, INC.'S MOTION TO DISMISS - 1

1 (See Affidavit of Service attached hereto as Exhibit A). On November 17, 2020 Defendant's filed  
2 their Motion to Dismiss and served the same on November 18, 2020.

3  
4 LEGAL ARGUMENT

5 NRCP 4(e) reads:

6 The summons and complaint must be served upon a defendant no  
7 later than 120 days after the complaint is filed, unless the court grants  
8 an extension of time under this rule. If service of the summons and  
9 complaint is not made upon a defendant before the 120-day service  
10 period—or any extension thereof—expires, *the court must dismiss*  
11 *the action*, without prejudice, as to that defendant upon motion or  
12 upon the court's own order to show cause. If a plaintiff files a motion  
13 for an extension of time before the 120-day service period—or any  
14 extension thereof—expires and shows that good cause exists for  
15 granting an extension of the service period, the court must extend the  
16 service period and set a reasonable date by which service should be  
17 made. (Emphasis Added.)

14 Here, Plaintiff served Defendant's registered agent, Corporation Service Company, on  
15 November 12, 2020 (See Affidavit of Service attached hereto as Exhibit A). Plaintiff achieved  
16 service within the 120-day service window, therefore Plaintiff did not need to file a motion for the  
17 extension of time for service. Accordingly, Plaintiff successfully served Plaintiff within the 120-  
18 day window and service is timely upon Defendant. Therefore, Defendant's motion to dismiss must  
19 be denied.

20  
21 ///

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26 ///

27 ///

1 CONCLUSION

2 Defendant timely served the Complaint and Summons on November 12, 2020.  
3 Accordingly, Defendant's Motion to Dismiss must be denied.  
4

5 Dated this 1<sup>st</sup> day of December 2020.

6 /s/ Bradley Bellisario, Esq.

7 Bradley J. Bellisario, Esq.  
8 BELLISARIO LAW  
9 7495 W. Azure Drive, Suite 258  
10 Las Vegas, NV 89130  
11 T: 702.936.4800  
12 F: 702.936.4801  
13 E: bradb@bellisariolaw.com

14 CERTIFICATE OF SERVICE

15 Pursuant to NRCP 5(b), I certify that I am an employee of BELLISARIO LAW and that  
16 on this 1<sup>st</sup> day of December, 2020, I did cause a true copy of the foregoing OPPOSITION TO  
17 DEFENDANT SMITH'S FOOD & DRUG CENTERS, INC.'S MOTION TO DISMISS to be  
18 served upon each of the parties listed below via electronic service through the Eighth Judicial  
19 District Court's Odyssey E-File and Serve System:

20  
21 Jerry Busby  
22 COOPER LEVENSON, P.A.  
23 3016 West Charleston Blvd. #195  
24 Las Vegas, NV 89102  
25 Attorneys for Defendant

26 /s/ Bradley Bellisario

27 An Employee of Bellisario Law  
28

# EXHIBIT A

1 **AFFT**  
 2 Bellisario Law  
 3 Bradley Bellisario, Esq.  
 4 2945 N Martin L King Blvd  
 5 North Las Vegas, NV 89032  
 6 State Bar No.: 13452  
 7 Attorney(s) for: Plaintiff(s)

8 **DISTRICT COURT**  
 9 **CLARK COUNTY, NEVADA**

10 **David Walton**

11 **vs**

12 **Smith's Food & Drug Centers, Inc., A/K/A Kroger; et al**

*Plaintiff(s)*

*Defendant(s)*

Case No.: A-20-818068-C

Dept. No.: 2

Date:

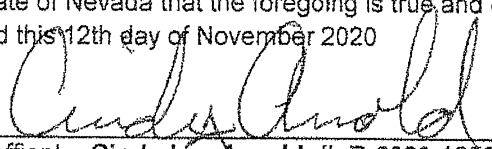
Time:

**AFFIDAVIT OF SERVICE**

15 I, Cindy Lee Arnold, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the  
 16 United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and  
 17 not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of  
 18 the: Summons: Complaint on the 12th day of November, 2020 and served the same on the 12th day of  
 19 November, 2020 at 12:25PM by serving the Defendant(s), Smith's Food & Drug Centers, Inc., A/K/A Kroger  
 20 by personally delivering and leaving a copy at Corporation Service Company, 112 N. Curry St., Carson City, NV  
 21 89703 with Kris Osborne, Administrative Assistant pursuant to NRS 14.020 as a person of suitable age and  
 22 discretion at the above address, which address is the address of the registered agent as shown on the current  
 23 certificate of designation filed with the Secretary of State.


24 Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

32 I declare under penalty of perjury under the law  
 33 of the state of Nevada that the foregoing is true and correct.  
 34 Executed this 12th day of November 2020

35   
 36 Affiant - Cindy Lee Arnold #: R-2020-12596  
 Legal Process Service - License # 604



Electronically Filed  
12/3/2020 9:33 AM  
Steven D. Grierson  
CLERK OF THE COURT



NWM  
JERRY S. BUSBY  
Nevada Bar #001107  
COOPER LEVENSON, P.A.  
3016 West Charleston Boulevard - #195  
Las Vegas, Nevada 89102  
(702) 366-1125  
FAX: (702) 366-1857  
[jbusby@cooperlevenson.com](mailto:jbusby@cooperlevenson.com)  
Attorneys for Defendant  
SMITH'S FOOD & DRUG CENTERS, INC.

DISTRICT COURT  
CLARK COUNTY, NEVADA

DAVID WALTON,  
  
Plaintiff,

CASE NO.: A-20-818068-C  
DEPT. NO.: II

vs.

SMITH'S FOOD & DRUG CENTERS, INC.  
A/K/A KROGER AND DOES I-V, AND  
ROE CORPORATIONS, I-V, INCLUSIVE,

**NOTICE OF WITHDRAWAL OF  
MOTION**

Defendants.

TO: DAVID WALTON, Plaintiff;

TO: BRADLEY J. BELLISARIO, ESQ., Attorney for Plaintiff,

PLEASE TAKE NOTICE that Defendant SMITH'S FOOD & DRUG CENTERS, INC. hereby  
withdraws its **MOTION TO DISMISS** currently noticed to be heard on December 21, 2020, at 9:30  
a.m.

Dated this 3rd day of December, 2020.

COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby  
Jerry S. Busby  
Nevada Bar No. 001107  
3016 West Charleston Boulevard - #195  
Las Vegas, Nevada 89102  
Attorneys for Defendant  
SMITH'S FOOD & DRUG CENTERS, INC.



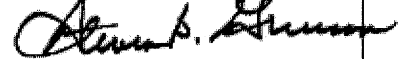
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and that on this 3rd day of December, 2020, I did cause a true copy of the foregoing **DEFENDANT SMITH'S FOOD & DRUG CENTERS, INC.'S NOTICE OF WITHDRAWAL OF MOTION** to be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

Bradley J. Bellisario, Esq.  
7495 West Azure Drive – Suite 258  
Las Vegas, NV 89130  
Attorney for Plaintiff

By /s/ Theresa H. Rutkowski  
An Employee of  
COOPER LEVENSON, P.A.

Electronically Filed  
12/4/2020 1:02 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 **ANS**  
2 JERRY S. BUSBY  
3 Nevada Bar #001107  
4 COOPER LEVENSON, P.A.  
5 3016 West Charleston Boulevard - #195  
6 Las Vegas, Nevada 89102  
7 (702) 366-1125  
8 FAX: (702) 366-1857  
9 [jbusby@cooperlevenson.com](mailto:jbusby@cooperlevenson.com)  
10 Attorneys for Defendant  
11 SMITH'S FOOD & DRUG CENTERS, INC.

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 DAVID WALTON,  
10 Plaintiff,

CASE NO.: A-20-818068-C  
DEPT. NO.: II

11 vs.

12 SMITH'S FOOD & DRUG CENTERS, INC.  
13 A/K/A KROGER AND DOES I-V, AND  
14 ROE CORPORATIONS, I-V, INCLUSIVE,

**DEFENDANT SMITH'S FOOD & DRUG  
CENTERS, INC.'S ANSWER TO  
PLAINTIFF'S COMPLAINT**

14 Defendants.

15 COMES NOW, Defendant, SMITH'S FOOD & DRUG CENTERS, INC., by and through its  
16 attorney of record, JERRY S. BUSBY, ESQ., of the law firm COOPER LEVENSON, P.A., and hereby  
17 answers Plaintiff's Complaint on file herein as follows:

18 **I.**

19 This answering Defendant states that it does not have sufficient knowledge or information  
20 upon which to base a belief as to the truth of the allegations contained in Paragraphs 1, 3, 4, 5, 8, 9,  
21 10, 11, 13, 14 and 15 of Plaintiff's Complaint and upon said ground, denies each and every  
22 allegation contained therein.

23 **II.**

24 In response to Paragraph 2 of Plaintiff's Complaint, this answering Defendant denies that it is  
25 also known as "Kroger". This answering Defendant admits the remaining allegations contained in  
26 said Paragraph.

27 **III.**

28 In response to Paragraph 6 of Plaintiff's Complaint, this answering Defendant admits that it

1 owned, maintained, managed, operated and controlled the SMITH'S store located at 3013 W. Craig  
2 Road, North Las Vegas, NV 89032. This answering Defendant denies any remaining allegations  
3 contained in said Paragraph.

4 **IV.**

5 This answering Defendant admits the allegations contained in Paragraph 7 of Plaintiff's  
6 Complaint.

7 **V.**

8 This answering Defendant denies each and every allegation contained in Paragraph 12 of  
9 Plaintiff's Complaint".

10 **VI.**

11 This answering Defendant, in response to Paragraph 16 of that portion of Plaintiff's  
12 Complaint entitled "**FIRST CAUSE OF ACTION (Premises Liability - Negligence)**" incorporates  
13 herein by reference each and every answer previously alleged to the Paragraphs which the Plaintiff  
14 has realleged by incorporation.

15 **VII.**

16 Paragraphs 17, 18 and 19 of that portion of Plaintiff's Complaint entitled "**FIRST CAUSE**  
17 **OF ACTION (Premises Liability - Negligence)**" state a legal conclusion which is the sole province  
18 of the Court to determine. This answering Defendant therefore denies said Paragraphs.

19 **VIII.**

20 This answering Defendant denies each and every allegation contained in Paragraphs 20, 21,  
21 22 and 23 of that portion of Plaintiff's Complaint entitled "**FIRST CAUSE OF ACTION**  
22 **(Premises Liability - Negligence)**".

23 **IX.**

24 This answering Defendant, in response to Paragraph 24 of that portion of Plaintiff's  
25 Complaint entitled "**SECOND CAUSE OF ACTION (Premises Liability – Gross Negligence)**"  
26 incorporates herein by reference each and every answer previously alleged to the Paragraphs which  
27 the Plaintiff has realleged by incorporation.

28 ///

X.

Paragraphs 25, 26 and 27 of that portion of Plaintiff's Complaint entitled "**SECOND CAUSE OF ACTION (Premises Liability – Gross Negligence)**" state a legal conclusion which is the sole province of the Court to determine. This answering Defendant therefore denies said Paragraphs.

XI.

This answering Defendant denies each and every allegation contained in Paragraphs 28, 29, 30, 31, 32 and 33 of that portion of Plaintiff's Complaint entitled "**SECOND CAUSE OF ACTION (Premises Liability – Gross Negligence)**".

XII.

This answering Defendant, in response to Paragraph 34 of that portion of Plaintiff's Complaint entitled "**THIRD CAUSE OF ACTION (Negligent Hiring)**" incorporates herein by reference each and every answer previously alleged to the Paragraphs which the Plaintiff has realleged by incorporation.

XIII.

Paragraph 35 of that portion of Plaintiff's Complaint entitled "**THIRD CAUSE OF ACTION (Negligent Hiring)**" states a legal conclusion which is the sole province of the Court to determine. This answering Defendant therefore denies said Paragraph.

XIV.

This answering Defendant denies each and every allegation contained in Paragraphs 36, 37 and 38 of that portion of Plaintiff's Complaint entitled "**THIRD CAUSE OF ACTION (Negligent Hiring)**".

XV.

This answering Defendant, in response to Paragraph 39 of that portion of Plaintiff's Complaint entitled "**FOURTH CAUSE OF ACTION (Negligent Training)**" incorporates herein by reference each and every answer previously alleged to the Paragraphs which the Plaintiff has realleged by incorporation.

XVI.

Paragraph 40 of that portion of Plaintiff's Complaint entitled "**FOURTH CAUSE OF ACTION**"

1 (Negligent Training)” states a legal conclusion which is the sole province of the Court to determine.  
2 This answering Defendant therefore denies said Paragraph.

3 **XVII.**

4 This answering Defendant denies each and every allegation contained in Paragraphs 41, 42  
5 and 43 of that portion of Plaintiff’s Complaint entitled “**FOURTH CAUSE OF ACTION**  
6 (Negligent Training)”.

7 **XVIII.**

8 This answering Defendant, in response to Paragraph 44 of that portion of Plaintiff’s  
9 Complaint entitled “**FIFTH CAUSE OF ACTION (Negligent Retention)**” incorporates herein by  
10 reference each and every answer previously alleged to the Paragraphs which the Plaintiff has  
11 realleged by incorporation.

12 **XIX.**

13 Paragraph 45 of that portion of Plaintiff’s Complaint entitled “**FIFTH CAUSE OF ACTION**  
14 (Negligent Retention)” states a legal conclusion which is the sole province of the Court to determine.  
15 This answering Defendant therefore denies said Paragraph.

16 **XX.**

17 This answering Defendant denies each and every allegation contained in Paragraphs 46, 47  
18 and 48 of that portion of Plaintiff’s Complaint entitled “**FIFTH CAUSE OF ACTION (Negligent**  
19 **Retention)”.**

20 **AFFIRMATIVE DEFENSES**

21 **FIRST AFFIRMATIVE DEFENSE**

22 Plaintiff did not use reasonable diligence to care for his injuries, thereby aggravating said injuries  
23 as a result. Therefore, Plaintiff’s claims against this answering Defendant should be denied, or any  
24 recovery reduced in proportion to said negligence of Plaintiff.

25 **SECOND AFFIRMATIVE DEFENSE**

26 At the time and place alleged in Plaintiff’s Complaint, and for a period of time prior thereto,  
27 Plaintiff did not exercise ordinary care, caution, or prudence for the protection of his own safety, and  
28 injuries and damages complained of by Plaintiff in the Complaint, if any, were directly and proximately

1 caused or contributed to by the fault, failure to act, carelessness, and negligence of Plaintiff, and  
2 therefore Plaintiff's claims against this answering Defendant should be denied, or any recovery reduced  
3 in proportion to said negligence of Plaintiff.

4 WHEREFORE, this answering Defendant prays that Plaintiff take nothing by virtue of his  
5 Complaint on file herein; for costs and disbursements incurred in this action; and for such other and  
6 further relief as to the Court may deem proper.

7 Dated this 4th day of December, 2020.

8 COOPER LEVENSON, P.A.

9  
10 By /s/ Jerry S. Busby  
11 Jerry S. Busby  
12 Nevada Bar No. 001107  
13 3016 West Charleston Boulevard - #195  
14 Las Vegas, Nevada 89102  
15 Attorneys for Defendant  
16 SMITH'S FOOD & DRUG CENTERS, INC.  
17  
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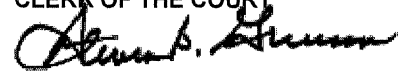
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and that on this 4th day of December, 2020, I did cause a true copy of the foregoing **DEFENDANT SMITH'S FOOD & DRUG CENTERS, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT** to be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

Bradley J. Bellisario, Esq.  
7495 West Azure Drive – Suite 258  
Las Vegas, NV 89130  
Attorney for Plaintiff

By /s/ Theresa H. Rutkowski  
An Employee of  
COOPER LEVENSON, P.A.

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Steven D. Grierson  
CLERK OF THE COURT



1 **SUBT**

2 Michael A. Kristof, Esq.

3 Nevada Bar No. 7780

4 **KRISTOF LAW GROUP**

5 9960 W. Cheyenne Ave, Ste. 170

6 Las Vegas, NV 89129

Phone: (702) 703-2838

Fax: (702) 846-0818

michael@kristoflawgroup.com

Attorneys for Plaintiff

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 DAVID WALTON, individually

) Case No.: A-20-818068-C

) Dept.: XIX

10 Plaintiff,

11 vs.

12 SMITH'S FOOD & DRUG CENTERS, INC. a/k/a

) **SUBSTITUTION OF ATTORNEY**

13 KROGER; DOES I - V; and ROE

14 CORPORATIONS I -V, inclusive,

15 Defendants.

16

17

18 COMES NOW, BRADLEY J. BELLISARIO, ESQ. of BELLISARIO LAW FIRM, attorney

19 of record for Plaintiff DAVID WALTON, does hereby consent to the substitution of MICHAEL A.

20 KRISTOF, ESQ. of KRISTOF LAW GROUP as attorney of record for Plaintiff in the above-

21 captioned matter.

22 DATED this 31<sup>st</sup> day of January, 2021.

23

24 BELLISARIO LAW FIRM

25 /s/ Bradley J. Bellisario

26 BRADLEY J. BELLISARIO, ESQ.

27 Nevada Bar No. 13452

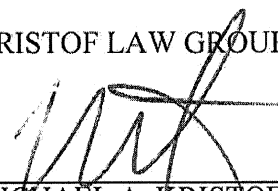
28 2945 N. Martin Luther King Boulevard

N. Las Vegas, NV 89032

Attorney for Plaintiff

1 MICHAEL A. KRISTOF, ESQ. of KRISTOF LAW GROUP does hereby agree to be  
2 substituted in the place of BRADLEY J. BELLISARIO, ESQ., ESQ. of BELLISARIO LAW FIRM  
3 as attorney of record for Plaintiff, in the above-captioned matter.  
4

5 KRISTOF LAW GROUP

6   
7 MICHAEL A. KRISTOF, ESQ.  
8 Nevada Bar No. 7780  
9 9960 W. Cheyenne Ave., Suite 170  
10 Las Vegas, Nevada 89129

11  
12 I, DAVID WALTON, do hereby consent to the substitution of MICHAEL A. KRISTOF,  
13 ESQ. of KRISTOF LAW GROUP as my attorney of record in the place of BRADLEY J.  
14 BELLISARIO, ESQ. of BELLISARIO LAW FIRM in the above-captioned matter.  
15

16 DATED this 27 day of January, 2021.

17  
18   
19 DAVID WALTON  
20  
21  
22  
23  
24  
25  
26  
27  
28


**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5 (b), I hereby certify that on the 1<sup>st</sup>  
February  
day of ~~January~~, 2021, the **SUBSTITUTION OF ATTORNEYS** was served via electronic  
service to the following counsel of record:

Jerry Busby, Esq.  
COOPER LEVENSON, P.A.  
3016 W. Charleston Boulevard, Suite 195  
Las Vegas, Nevada 89102  
Attorneys for Defendants

/s/ Michael Kristof  
\_\_\_\_\_  
An Employee of KRISTOF LAW GROUP

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2/8/2021 9:43 AM  
Steven D. Grierson  
CLERK OF THE COURT



**REQT**

Michael A. Kristof, Esq.

Nevada Bar No. 7780

**KRISTOF LAW GROUP**

9960 W. Cheyenne Ave, Ste. 170

Las Vegas, NV 89129

Phone: (702) 703-2838

Fax: (702) 846-0818

michael@kristoflawgroup.com

Attorneys for Plaintiff

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAVID WALTON, individually

) Case No.: A-20-818068-C

) Dept.: XIX

Plaintiff,

vs.

SMITH'S FOOD & DRUG CENTERS, INC. a/k/a

) **REQUEST FOR EXEMPTION FROM**

KROGER; DOES I - V; and ROE

) **ARBITRATION**

CORPORATIONS I -V, inclusive,

Defendants.

Plaintiff hereby requests the above-entitled matter be exempted from arbitration pursuant to Nevada Arbitration Rules 3 and 5, as this case involves an amount in excess of \$50,000, exclusive of interest and costs.

While the filing of Plaintiff's arbitration exempt request is not timely, in accordance with Nevada Arbitration Rule 5(A), Plaintiff has good cause to support the delayed request. Plaintiff's counsel only recently took over the handling of this case from Plaintiff's prior counsel who has temporarily closed his practice for personal reasons. Kristof Law Group is unaware as to why prior counsel did not file a timely petition other than to say this counsel is aware that prior counsel was dealing with significant personal issues – these same issues which have caused him to close his

practice. Plaintiff's counsel would ask that there not be a fine for the late filing as Plaintiff only became Kristof Law Group's client on January 21, 2021.

### **I. SUMMARY OF FACTS**

This is a negligence/personal injury matter. On July 15, 2018, Plaintiff was shopping at Defendant Smith's Food & Drug Centers, Inc. Plaintiff alleges that after he shopped for his items, he proceeded to the self-checkout area where he slipped and fell on an unknown substance on the floor.

Plaintiff alleges that he sustained severe injuries as a result of Defendant's negligence. Plaintiff's primary injuries were to his right shoulder and left knee. Plaintiff sought treatment for his injuries, which included initial conservative chiropractic care. Unfortunately, it was discovered through MRIs of the right shoulder and left knee that Plaintiff had sustained tears to both areas. Plaintiff was subsequently referred to Dr. Bernard Ong for orthopedic evaluation. Dr. Ong recommended for Plaintiff to undergo left knee arthroscopy, which was performed on January 12, 2019, as well as right shoulder arthroscopy, which was performed on November 21, 2019.

Plaintiff's current medical expenses are as follows:

#### **Past Medical Expenses**

Injury Solutions .....	\$122,223.50
Care Now .....	TBD
Las Vegas Radiology .....	\$9,900.00
Valley Anesthesiology Consultants .....	\$4,800.00
Bernard Ong, M.D. ....	\$16,489.00 <sup>1</sup>
Affinity Surgery Center .....	\$111,950.00
All Medical .....	\$ 3,074.00
<b>TOTAL: .....</b>	<b>\$268,436.50</b>

///

<sup>1</sup> This is not a final total. Plaintiff's counsel is in the process of obtaining a current billing ledger.

1 I hereby certify pursuant to N.R.C.P. 11 this case to be within the exemption referenced  
2 above and am aware of the sanctions which may be imposed against any attorney or party who  
3 without good cause or justification attempts to remove a case from the arbitration program.  
4

5 I further certify pursuant to NRS Chapter 239B and NRS 603A.040 that this document and  
6 any attachments thereto do not contain personal information including, without limitation, home  
7 address/phone number, social security number, driver's license number or identification card  
8 number, account number, PIN numbers, credit card number or debit card number, in combination  
9 with any required security code, access code or password that would permit access to the person's  
10 financial account.  
11

12 DATED this 8th day of February, 2021.

13 KRISTOF LAW GROUP

14 */s/ Michael A. Kristof*

15 MICHAEL A. KRISTOF, ESQ.  
16 Nevada Bar No. 7780  
17 9960 W. Cheyenne Ave., Suite 170  
18 Las Vegas, Nevada 89129  
19  
20  
21  
22  
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28



**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5 (b), I hereby certify that on the 8<sup>th</sup> day of February, 2021, the **REQUEST FOR EXEMPTION FROM ARBITRATION** was served via electronic service to the following counsel of record:

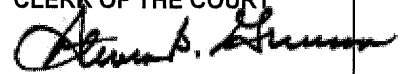
Jerry Busby, Esq.  
COOPER LEVENSON, P.A.  
3016 W. Charleston Boulevard, Suite 195  
Las Vegas, Nevada 89102  
Attorneys for Defendants

*/s/ Michael A. Kristof*

---

An Employee of KRISTOF LAW GROUP

Electronically Filed  
2/25/2021 5:06 PM  
Steven D. Grierson  
CLERK OF THE COURT



CDRG

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

David Walton, Plaintiff(s)

vs.

CASE NO: A-20-818068-C  
DEPT. NO: XIX

Smith's Food & Drug Centers, Inc.,

Defendant(s)

**COMMISSIONER'S DECISION ON REQUEST FOR EXEMPTION**

REQUEST FOR EXEMPTION FILED ON: February 08, 2021

EXEMPTION FILED BY: Plaintiff OPPOSITION: No

**DECISION**

Having reviewed the Request for Exemption, and all related pleadings, the Request  
for Exemption is hereby GRANTED.

DATED this 25<sup>th</sup> of February, 2021.



ADR COMMISSIONER

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**NOTICE**

Pursuant to Nevada Arbitration Rule 5(D), you are hereby notified you have five (5) days from the date you are served with this document within which to file written objections with the Clerk of Court and serve all parties. The Commissioner's Decision is deemed served three (3) days after the Commissioner's designee deposits a copy of the Decision in the U.S. Mail. Pursuant to NEFCR Rule 9(f)(2) an additional 3 days is not added to the time if served electronically (via e-service).

**A copy of the foregoing Commissioner's Decision on Request for Exemption was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program on the date of e-filing.**

*If indicated below*, a copy of the foregoing Commissioner's Decision on Request for Exemption was also:

- ☐ Placed in the folder of counsel maintained in the Office of the Clerk of Court on \_\_\_\_\_, 2021.
- ☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at their last known address(es) on \_\_\_\_\_, 2021.

/s/ Loretta Walker  
ADR COMMISSIONER'S DESIGNEE